Chong Chee Liong v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q–06B–13 OF 2006
LOW HOP BING, ZAINUN ALI AND HASAN LAH JJCA
28 JANUARY 2008

Criminal Law — Prevention of Corruption Act 1961 — Burden of proof — Accomplices — Whether could rely on uncorroborated evidence of accomplice — Whether conviction liable to be set aside if trial court warned itself about danger acting on uncorroborated evidence of accomplice

Evidence — Witness — Credibility — Witnesses found lying — Whether safe to rely on uncorroborated evidence — Whether trial judge wrong to call defence

The Sarawak Forestry Department started a reforestation project in 1979 in Sampadi Forest Reserve, Lundu, Sarawak. The appellant was appointed as the crew/field leader pursuant to a field instruction issued by the department. Under the field instruction, once the contractor completed the maintenance work, it had to be inspected by the appellant and payment for the work would only be made after final inspection had been completed. The appellant was charged in Kuching Sessions Court for offences under s 4(c) of the Prevention of Corruption Act 1961, for knowingly using documents which contained false material particulars by certifying that the maintenance works in Sampadi Forest Reserve had been satisfactorily completed when in fact they were not, to mislead his principal. Acting on the evidence of PW1, PW2, PW3 and the statements of one Raper, the trial judge made her finding that no works had been carried out in bills certified by the appellant. The appellant was convicted on all eight charges against him. Upon appeal to the High Court, the appellant was acquitted and discharged of four out of the eight charges. The appellant appealed to the Court of Appeal against the High Court's decision in dismissing his appeal in respect of the other four charges.

Held, allowing the appeal:

(1) The learned sessions court judge was aware that there was no corroborative evidence to support the evidence of PW1, PW2, PW3 and the statements of Raper that they did not do any work in the

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compartments mentioned in the four bills. She accepted their evidence after reminding herself of the danger of relying on the uncorroborated evidence of the accomplices. The mere fact that a trial court has warned itself about the danger of acting on the uncorroborated evidence of an accomplice and convicted the accused does not mean that the conviction is not liable to be set aside (see para 25).

(2) It is to be observed that the learned sessions court judge had made a finding that PW1, PW2 and PW3 were not telling the truth when they denied knowledge of the whereabouts of Sampadi Forest Reserve. As such, it would be unsafe to rely on their uncorroborated evidence (see para 28).

[Bahasa Malaysia summary

Jabatan Perhutanan Sarawak memulakan satu projek perhutanan pada tahun 1979 di Hutan Simpanan Sampadi, Lundu, Sarawak. Perayu telah dilantik sebagai krew/pemimpin lapangan lanjutan daripada arahan kerja lapangan dari jabatan. Di bawah arahan lapangan, setelah kontraktor selesai dengan kerja penyelenggaran, ia perlu diperiksa oleh perayu dan bayaran untuk kerja hanya boleh dibuat setelah pemeriksaan akhir selesai disempurnakan. Perayu telah dituduh di Mahkamah Sesyen Kuching untuk kesalahan di bawah s 4(c) Akta Pencegahan Rasuah 1961, kerana dengan sengaja mengunakan dokumen yang mengandungi butiran bahan palsu dengan mengesahkan bahawa kerja penyelenggaran di Hutan Simpanan Sampadi telah disempurnakan dengan puashati walhal ia tidak, telah memperdaya prinsipalnya. Bertindak berpandukan bukti oleh PW1, PW2, PW3 dan kenyataan dari seseorang bernama Raper, hakim perbicaraan membuat penemuannya bahawa tiada kerja telah dijalankan dalam bil-bil yang disahkan oleh perayu. Perayu telah disabitkan atas kesemua lapan pertuduhan ke atasnya. Atas rayuan ke Mahkamah Tinggi, perayu telah dibebaskan dan dilepaskan atas empat daripada lapan pertuduhan tersebut. Perayu merayu di Mahkamah Rayuan menentang keputusan Mahkamah Tinggi dalam menolak rayuan berhubung dengan empat pertuduhan yang lain itu.

Diputuskan, membenarkan rayuan:

(1) Hakim mahkamah sesyen yang bijaksana sedar bahawa tiada bukti sokongan untuk menyokong bukti PW1, PW2, PW3 dan kenyataan dari Raper yang mengatakan dia tidak menjalankan apa-apa kerja dalam petak seperti yang dinyatakan dalam empat bil tersebut. Beliau menerima bukti mereka setelah mengingatkan dirinya akan bahaya bergantung kepada bukti tanpa sokongan rakan sejenayah. Fakta bahawa mahkamah perbicaraan telah memberi amaran tentang bahaya

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bergantung kepada bukti tanpa sokongan oleh rakan sejenayah dan mensabitkan tertuduh, tidak bermakna bahawa sabitan tersebut tidak tertakluk untuk diketepikan (lihat perenggan 25).

(2) Adalah perlu diperhatikan bahawa hakim mahkamah sesyen telah membuat penemuan bahawa PW1, PW2 dan PW3 tidak bercakap benar apabila mereka menafikan pengetahuan di mana letaknya Hutan Simpanan Sampadi. Oleh sebab itu adalah tidak selamat untuk bergantung kepada bukti tanpa sokongan mereka (lihat perenggan 28).]

Notes

For cases on credibility of witness, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2673–2705.

For cases on s 4(c) Prevention of Corruption Act 1961, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2804–2818.

Cases referred to

Ah Mee v PP [1967] 1 MLJ 220 (refd)

Arulpragasan a/l Sandaraju v PP [1997] 1 MLJ 1 (refd)

Dato' Seri Anwar bin Ibrahim v PP and another appeal [2004] 3 MLJ 405 (refd)

Thong Hong Kee v PP [1952] MLJ 110 (refd)

Legislation referred to

Criminal Procedure Code s 180

Evidence Act 1950 ss 32(1)(i)(j), 114(b), 133

Prevention of Corruption Act 1961 s 4(c)

Appeal from: Criminal Case No SC-61–1 of 2001-I (Sessions Court, Kuching)

Anthony Tai (Anthony Tai Advocates) for the appellant.
Zulqarnain Hassan (Attorney General's Chambers) for the prosecution.

Hasan Lah JCA (delivering judgment of the court):

[1] The appellant was charged in the Kuching Sessions Court on eight counts for offences under s 4(c) of the Prevention of Corruption Act 1961 that the appellant had knowingly used documents which contained false material particulars, to wit, by certifying that the maintenance works in Sampadi Forest Reserve had been satisfactorily completed when in fact they were not, to mislead his principal. He was convicted on all the charges and was sentenced to 12 months imprisonment on each charge and the sentences are to run concurrently.

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[2] The appellant then filed an appeal to the High Court at Kuching against the conviction only. At the High Court the appellant was acquitted and discharged of four of the eight charges. His appeal against the other four charges was dismissed. It is to be noted that the four charges for which his appeal was allowed were in respect of the charges in the Kuching Sessions Court Criminal Case No 61–4–2000-II and No 61–5–2000-I and under those charges the offences were alleged to have taken place in 1996. The other four charges whereby his appeal was dismissed were in respect of the charges in case Nos 61–1–2000-I and 61–2–2000-II and under those charges the offences were alleged to have taken place in 1995.

[3] Arising from the decision of the High Court at Kuching the appellant then filed an appeal to this court against the decision of the learned High Court judge in dismissing the appellant's appeal in respect of the four charges and the public prosecutor also filed an appeal against the decision of the learned High Court judge in allowing the appellant's appeal in respect of the other four charges. However at the outset of the hearing of this appeal before us the learned deputy public prosecutor withdrew the prosecution's appeal. As such this appeal is only concerned with the appeal by the appellant in respect of the four offences that took place in 1995. We heard the appeal on 2–3 April 2007 and after hearing the arguments we reserved our judgment.

[4] Before we deal with the facts we would like to mention here that as the alleged offences took place in 1995 the standard of proof applicable in this case at the close of the prosecution case is beyond reasonable doubt as stated in *Arulpragasan a/l Sandaraju v Public Prosecutor* [1997] 1 MLJ 1. In that case the Federal Court (majority judgment) held that the standard of proof required from the prosecution at the close of its case having regard to the statutory formula in s 180 of the Criminal Procedure Code (as it was then) was the beyond all reasonable doubt standard of proof which called for a maximum evaluation of the evidence tendered by the prosecution

[5] The details of the four charges for the purpose of this appeal are as follows:

(1) Criminal Case No SC–61–1–2000-I

First charge

That you, between 26 April 1995 and 23 May 1995, at Reforestation & Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 26 April 1995 relating to Service Order No 988963, a claim for payment by Akin ak Raper amounting to RM8,100 for carrying out maintenance works in Compartment No RC9301 with a total area of 67.5 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said

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document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation and Rehabilitation has been satisfactorily completed, when in fact no such work has been done by the said Akin ak Raper which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under s 4(c) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act 57).

Second charge

That you, between 26 April 1995 and 23 May 1995, at Reforestation and Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 26 April 1995 relating to Service Order No 988973, a claim for payment by Raper ak Lakie amounting to RM6,300 for carrying out maintenance works in Compartment No RC9306 with a total area of 52.5 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation & Rehabilitation has been satisfactorily completed, when in fact no such work has been done by the Raper ak Lakie which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under s 4(c) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act 57).

Third charge

That you, between 26 April 1995 and 23 May 1995, at Reforestation and Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 26 April 1995 relating to Service Order No 988971, a claim for payment by Ripin ak Raper amounting to RM6,900 for carrying out maintenance works in Compartment No RC9309 with a total area of 58.0 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation and Rehabilitation has been satisfactorily completed, when in fact no such work has been done by the said Ripin ak Raper which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under s 4(c) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act 57).

(2) Criminal Case No SC–61–2–2000-II

That you, between 4 May 1995 and 24 May 1995, at Reforestation & Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 4 May 1995 relating to Service Order No 989501, a claim for payment by Ajan ak Chiku amounting to RM6,096, for carrying out maintenance works in Compartment No RC9303 with a total area of 50.8 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you

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certified the said maintenance work of Reforestation & Rehabilitation had been satisfactorily completed, when in fact no such work has been done by the said Ajan ak Chiku which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under s 4(c) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act 57).

[6] It may be convenient at this stage to set out the documents relevant in this case where particular references to them have been made in the four charges:

(a) Bill dated 26 April 1995 ie exh P1(3) relating to service order No 988963 ie exh P1(2);

(b) Bill dated 26 April 1995 ie exh P3(3) relating to service order No 988973 ie exh P3(2);

(c) Bill dated 26 April 1995 ie exh P5(3) relating to service order No 988971 ie exh P5(2);

(d) Bill dated 4 May 1995 ie exh P7(3) relating to service order No 989051 ie exh P7(2).

[7] The facts as proved by the prosecution, after having taken into account the cross-examination of the prosecution witnesses by the defence, are as follows. The Sarawak Forestry Department started a reforestation project in 1979 in Sampadi Forest Reserve, Lundu, Sarawak. For the purpose of planting the trees in the said project and the maintenance of the forest the Forestry Department would engage local people as contractors by issuing service order to them each not exceeding RM10,000 in accordance with the Treasury Instruction. These contractors would be selected by the crew/field leader appointed by the department. In this case the appellant was appointed as the crew/field leader by virtue of a field instruction issued by the department to the appellant who was then a forest ranger. The appellant was assisted by PW10 (Hasbi bin Darahaman) who was a forest guard.

[8] According to the field instruction issued to the appellant which was marked as exh P20 once the contractor completed the work it had to be inspected by the appellant and payment for the work would only be made after final inspection had been completed. Upon completion of the work, the appellant would prepare a report to be submitted to the State Director of the Forestry Department certifying the completion of the work. The report which was prepared by the appellant and which related to the four charges in this appeal was tendered as exh P18 whereby he stated that:

(a) the works were undertaken by local contractors; and

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(b) that maintenance was started on 27 March 1995 and completed on 3 May 1995, a total of 52 compartments were maintained with a total area of 1633.2 hectares.

[9] On being satisfied that the works were completed a bill would be prepared and that bill had to be countersigned by the team members who had to certify that the work had been satisfactorily completed before payments were made to the contractors. The appellant as the crew/field leader for the project was the main person who had to certify that the works were completed in the bills ie exhs P1(3), P3(3), P5(3) and P7(3) respectively.

[10] PW1, Akin ak Raper, was a farmer. In his evidence he said that the appellant had approached him and asked him to work for the Forest Department telling him that all that PW1 need to do was to sign the relevant documents. The appellant did not tell him the nature of his work in Sampadi Forest Reserve. The appellant also asked PW1 to get PW1's relatives to do the work. PW1 then gave the particulars of his father, Raper ak Lakie (deceased), his brother Ripin ak Raper (PW2) and his brother-in-law Ajan ak Chiku (PW3) to the appellant. The four of them then signed some documents given by the appellant to them. PW1 signed exh P1(3) and P2(3). According to PW1 all four of them subsequently received some cheques from the District Office in Lundu in 1995. The cheque marked as P12 was received by him. Together they went to the Utama Bank in Lundu to cash the cheques and thereafter, PW2, PW3 and Raper ak Lakie gave their money to him for him to give the appellant's share to the appellant as requested by the appellant. PW1 gave the money to the appellant.

[11] PW2, Ripin ak Raper is the brother of PW1. He stated that in 1995 PW1 gave him some blank documents to sign and told him that it was for working in Sampadi Forest Reserve without telling him the nature of the job. He signed the bill which was marked as exh P5(3). He confirmed that he did not do the work mentioned in exh P5(3). Later he received a cheque marked as exh P10. The four of them went to Bank Utama to cash the cheques after receiving the cheques. PW2 gave the money to PW1. PW2 said that the four of them did not do any work for the Forest Department in 1995 and according to PW2 he had never heard of Sampadi Forest Reserve. PW2 stated under cross-examination that he only received RM300 and the rest of the money was given to PW1.

[12] PW3, Ajan ak Chiku, told the court that in 1995 PW1 gave him some documents to sign without telling him anything. He did not know what these documents were for and he did not carry out the work mentioned therein.

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Subsequently the four of them received some cheques in the District Office in Lundu and all of them went to cash the cheques. PW2, Raper ak Lakie (deceased) and PW3 gave the money to PW1. Under cross-examination, PW3 said that he did not know where Sampadi Forest Reserve was.

[13] Through PW1 also the prosecution adduced the death certificate of Raper ak Lakie which was marked as exh P17(a). Pursuant to s 32(1)(i) and (j) of the Evidence Act 1950 the prosecution tendered two statements made by the deceased in the course of the investigation and they were marked as exhs P25 and P28 respectively. In exh P25 the deceased stated that in April 1995 PW1 told the deceased that PW1 wanted to use his name and the names of the family members for getting a contract work in Sampadi Forest Reserve and the deceased was asked to sign some documents in April 1995. The deceased did not do any work in Sampadi Forest Reserve after that. However a few months later which was between June and July 1995 PW1 showed the deceased the cheques in respect of the maintenance work in Sampadi Forest Reserve. PW1, PW2, PW3 and the deceased went to cash the cheques at the bank and according to the deceased the appellant was with them in the bank. After that they, including the appellant, proceeded to a coffee shop for a drink and in the coffee shop the deceased, PW2 and PW3 handed all their money to PW1 in the presence of the appellant. They later returned to their homes. According to the deceased a few hours later PW1, the appellant and a Chinese driver arrived at PW1's house and the deceased saw PW1 giving an envelope wrapped in a newspaper to the appellant.

[14] PW10, Hasbi bin Darahaman, was a forest guard with the Forest Department. It was his responsibility to supervise workers, to give instructions relating to the works and to inform the officers in charge about the completed works. He was one of the signatories on the bills marked exhs P1(3), P3(3), P5(3) and P7(3). According to him he signed these bills without inspecting the area because his supervisor, the appellant, asked him to sign the documents and told him that the works in the compartments stated therein had been completed and he trusted the appellant. He and the appellant were supposed to inspect the works mentioned in the bills but he did not do it and he did not know whether the accused did the inspection. He gave two reasons as to why he could not decline signing those bills. First, because he was instructed by his higher authority, namely the Assistant Director of the Forestry Department of Sarawak, Jawa anak Kandawang (PW12), to do so and second, because the appellant, who was his supervisor, had instructed him to sign.

[15] Under cross-examination he agreed that it was his duty to sign those bills and it was not because of any instruction given by the appellant. At the

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end of each field trip he would prepare a 'Laporan Harian Kerja Lapangan' (exh D2 (a-d)) to make his claim and he said that the content in his 'Laporan Harian Kerja Lapangan' (exh D2 (a-d)) in respect of his claim for the supervision of maintenance work in Sampadi Forest Reserve for the period from 21 March 1995 to 3 May 1995 was 100% correct.

[16] PW11, Alexander ak Vincent, was the head of the Plantation Unit in the Reforestation and Rehabilitation Branch in Sarawak Forestry Department in 1995 and 1996. According to him all field crew must submit field reports for the purpose of informing the superiors of the progress of work and the problems encountered on the ground. It was his responsibility to check those reports. With regard to the reports for 1995 (exh P18 (1–10)) prepared by the appellant he found there was no problem on the ground. PW11 was one of the signatories on P1(3), P3(3), P5(3) and P7(3). He signed these documents based solely on the field reports submitted by the appellant. He had no personal knowledge whether actual work had been carried out because he did not inspect them.

[17] Under cross-examination PW11 stated that he certified those bills based on the report by the appellant and PW10. Apart from the field reports, there were spot checks made to check that the works were properly carried out in the various compartments. He denied that he had instructed PW10 to certify those bills. On the appointment of workers or contractors for the work PW11 said that recruitment of works was done at the base camp and a crew leader could appoint contractors subject to the approval of other crew members. The selected contractors' names would be submitted to the Assistant Director. He said it was not illegal for a contractor to sub-contract his work. What was important to the department was that the job was in fact carried out. It was also common and not wrong for the crew leader to help the contractors to prepare the bills because most of them were illiterate.

[18] PW12, Jawa ak Kandawang was the Assistant Director of Reforestation of the Sarawak Forestry Department. The field instruction for March/April 1995 (exh P20 (1–4)) was issued by him to the appellant who was the crew leader. PW12 certified the bills after his Plantation Officer had endorsed the appellant's field reports. Under cross-examination he said the recruitment of the contractors should be done at the base camp but the crew leader could either invite the contractors to come to the base camp or go to the *kampong* to look for the contractors. He agreed that the accused, on his own, would not be able to cover the whole area and he would need the assistance of his crew members. PW12 further said that before he certified

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those bills he satisfied himself that the works had been done by relying not only on the field report submitted by the appellant but also by PW10 and the spot check officer.

[19] PW13, Salleh ak Mit, was a Forest Officer who had served in the Research Division, Reforestation Unit, Forest Department in 1995. One of his duties was to do spot checks and prepare inspection reports after inspection. Exhibit P23 was his report dated 15 April 1995 whereby he stated that the work was satisfactorily carried out without any problems. It was based on what was told by the appellant as well as his own random inspection. He did not inspect all the compartments and as such he would not know if work in certain compartments were not carried out. Under cross-examination he said that the works in the compartments inspected by him were in progress. His remark in his report that 'Kerja-kerja penyelengaraan di Hutan Simpanan Sampadi yang diketuai oleh FR Chong Chee Liong berjalan dengan sempurna dan memuaskan tanpa sebarang masalah' was a fair and an accurate report. In re-examination he said that for his inspection he had to be led by the appellant to do his random inspection. He asked the appellant to accompany him to the compartments he wanted to visit.

[20] Before us the decision of the learned sessions court judge was attacked on several grounds. Those grounds can be grouped into two main categories, namely, that the learned sessions court judge was wrong to call for the defence at the end of the prosecution's case and that the learned Sessions Sourt judge had misconstrued the gist and essence of the appellant's defence and misdirected herself when she found that the appellant's defence was a mere denial. We do not intend to consider all the objections raised by learned counsel for the appellant. It will suffice if we deal with the more serious objections. In this judgment, we will first consider whether the learned sessions court judge had correctly, in law and on the facts, called for the defence. If she had not, it would not be necessary for us to consider the points raised by learned counsel for the appellant relating to the appellant's defence as the appellant is entitled to an acquittal. However if we agree with the learned scssions court judge's finding at the close of the case for the prosecution we will consider the other points raised by learned counsel with regards to the learned sessions court judge's finding on the appellant's defence.

[21] It is to be noted that throughout the trial the evidence of the prosecution main witnesses namely, PW1, PW2 and PW3, and the statements of Raper anak Lakie suggested that they did not do any work in

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Sampadi Forest Reserve and they did not appoint any subcontractor to do the work for them. The suggestion by the defence was that PW1, PW2, PW3 and Raper had carried out the work there either by themselves or by their workers or subcontractors. From the evidence adduced by the prosecution it is clear that the prosecution could only rely on the evidence of PW1, PW2 and PW3 and also the statements of Raper to prove that they had not done any work in Sampadi Forest Reserve in order to prove its case against the appellant. The other witnesses called by the prosecution could not support or corroborate their evidence on this material point. PW10, whose responsibility was to supervise the workers and the works and who signed those bills clearly said he did not inspect the area when he signed those bills even though it was a requirement that he should have inspected the area first to make sure that the works were done in those compartments before he signed those bills. The other person who signed those bills besides PW10 and the appellant was PW11. He relied on the reports submitted by the appellant and he had no personal knowledge whether works had been carried out in the compartments mentioned in those bills when he signed them.

[22] PW12 was the fourth signatory to those bills. He relied on the reports submitted by the appellant, PW10 and the spot check officer which means he also had no personal knowledge whether works had been carried out in those compartments. The last person who could have confirmed whether works had been carried out therein was PW13, the spot check officer. Unfortunately he too was unable to know whether works had been done in those compartments as he did not inspect all the compartments. In fact he did not say in his evidence whether he had inspected the compartments mentioned in those bills.

[23] Having carefully considered the evidence of the witnesses for the prosecution the learned sessions court judge made her finding that no works had been carried out in the compartments mentioned in those bills. This means she believed the evidence of PW1, PW2 and PW3 and the statements of Raper. This is what she said in her judgment:

> So, was it a case of some works being carried out but not 100% completed or was it a case of no work being carried out at all? PW1, PW2, PW3 and Raper anak Lakie (deceased) all claimed that they did not do any maintenance work in SFR as per the said eight bills. PW1, PW2 and PW3 had disagreed to the defence suggestion that PW1 had sub-contracted the work and got others to do the work for him. To my mind, if PW1, PW2, PW3 and Raper anak Lakie (deceased) had truly carried out the work either by themselves, or sub-contract it out, given that they had been duly paid by the Forest Department, why would they claim that they did not do the work? It just does not make any sense for them to deny the

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doing of work if they had indeed done so. There is no suggestion that there were grudges between them and the said four persons are taking their vengeance by falsely implicating the accused. I therefore believe them that they had never worked in the compartments in the period named in the eight bills (P1(3) to P8(3)). This being the case, it is impossible that for workers to be seen coming in out of the compartment mentioned in P1(3), P3(3), P5(3) and P7(3) as alleged by PW10.

[24] There is one aspect of this case that troubles us when the learned sessions court judge acted on the evidence of PW1, PW2, PW3 and the statements of Raper. It is this. They were accomplices and the learned sessions court judge has made this finding when she said:

I find that *Amri bin Abdullah*'s case is distinguishable from the present case in that the said four persons in the present case had knowingly given their personal particulars to the accused for work in the Forestry Department which they knew they from the start did not have to do, all they need to do was to sign some documents in blank and wait for the cheque, cash it and give the money to the accused. They each signed bills in blank to facilitate the claim for payment for the works which they knew they did not do. They must have been fully aware of the illegality of this arrangement. This is reflected in PW1's testimony in cross-examination where he said 'my said three relatives agreed to let their names to be used so that it would be easier for us to negotiate and that the matter would not be spread around' (p 15 line 7-8 of the notes of proceedings). To my mind they had all taken an active part in an unlawful scheme than mere giving of their names to the accused, thus they are accomplices.

Under s 114(b) of the Evidence Act, an accomplice is seen as unworthy of credit unless he is corroborated in material particulars while under s 133 thereof, he is regarded as a competent witness against an accused person and a conviction is not illegal just because it proceeds on the uncorroborated evidence of an accomplice. Reading both sections together, the cases have interpreted accomplice evidence as requiring corroboration as a matter of practice or prudence although as a matter of law, a direction must be given that it is unsafe to convict on accomplice evidence without corroboration.

Having heard and seen the PW1, PW2, PW3 and considered the circumstances, I find them to be credible witnesses albeit my earlier finding that their denial of the knowledge of the whereabouts of SFR is not credible. My reason for believing them is very simple, and as I have said earlier in my judgment, if the said four persons had carried out the work as per the eight bills and got paid accordingly, they could have just said so and there would be no current charges. In so denying having done the work, they had to come to court as witnesses and viewed as accomplices to an unlawful scheme, why would they put themselves to all these? There is no suggestion that they were seeking vengeance on the accused. I find their evidence to be credible evidence, albeit uncorroborated, as accomplice cannot corroborate

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each other. I believe and accept their evidence after reminding myself of the danger of relying on uncorroborated evidence of the accomplices.

[25] It is also clear that the learned sessions Court judge was aware that there was no corroborative evidence to support the evidence of PW1, PW2, PW3 and the statements of Raper that they did not do any work in the compartments mentioned in the four bills. She accepted their evidence after reminding herself of the danger of relying on the uncorroborated evidence of the accomplices. The mere fact that a trial court has warned itself about the danger of acting on the uncorroborated evidence of an accomplice and convicted the accused does not mean that the conviction is not liable to be set aside. In *Thong Hong Kee v Public Prosecutor* [1952] MLJ 110 Storr J said:

> Whilst an appellate court will always hesitate to overrule the decision of a trial judge based upon the demeanour of witnesses whom he had the opportunity of seeing in the witness-box, I think in the circumstances of this case it was unsafe to convict the appellant upon the uncorroborated evidence of the complainant who was an accomplice.

[26] The learned High Court judge did not consider this important issue of law in her judgment.

[27] In *Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal* [2004] 3 MLJ 405 Abdul Hamid Mohamad FCJ (as he then was) has referred to several cases on the evidence of the accomplices and corroboration and at pp 447 and 448 the learned judge said:

> In the circumstances, is it safe to convict the appellant on Azizan's evidence alone? No doubt Azizan has been consistent in admitting the incident at Tivoli Villa despite the shame that would have been caused to him by such admission though made years later, but we are doubtful as to when it happened and his purported role as the innocent victim therein. As such we are really in no position to say that his story is unusually convincing nor can we find any reason to give it special weight that warrants a conviction to be recorded on his evidence alone. We do not think it is safe to convict on his evidence alone. Furthermore, the offence is a sexual offence. Even though a conviction founded on the uncorroborative evidence of the complainant is not illegal provided that the presiding judge warns himself of the danger of convicting on such uncorroborated evidence (see *Chin Nam Hong v PP* [1965] MLJ 40, it is unsafe to convict on an uncorroborated testimony of the person on whom the offence is said to have been committed unless for any special reason that testimony is of special weight — see *Ganpart v Emperor* AIR 1918 Lab 322 and *Bal Mukundo Singh v Emperor* [1937] 38 Cr LJ 70 (Cal).

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> In this respect, our discussion and conclusion regarding corroborative evidence in support of the evidence of an accomplice and in respect of Azizan's evidence is applicable. On this ground too it is unsafe to convict the appellants on Azizan's uncorroborated evidence alone.

[28] Similarly in the instant case is it safe to convict the appellant on the uncorroborated evidence of PW1, PW2, PW3 and Raper? It is to be observed that the learned sessions court judge has made a finding that PW1, PW2 and PW3 were not telling the truth when they denied knowledge of the whereabouts of Sampadi Forest Reserve. In *Ah Mee v Public Prosecutor* [1967] 1 MLJ 220, the appellant had been convicted of rape. The trial judge considered that the complainant's credibility was unimpeached and he stated that he was personally impressed by her demeanour. He thought her evidence consistent throughout and held that her evidence of rape was amply corroborated. The Federal Court held that in view of the inconsistencies in the evidence of the complainant it was unsafe to rely on her uncorroborated evidence and therefore the conviction must be set aside. In the instant case PW1, PW2 and PW3 were found to be lying in their evidence and as such we are of the view that it would be unsafe to rely on their uncorroborated evidence.

[29] In *Sarkar on Evidence* (14th Ed) at p 1924, the following reasons are given as to why the accomplice evidence is unreliable:

> The principal reasons for holding accomplice evidence to be untrustworthy, are: (1) because an accomplice is likely to swear falsely in order to shift the guilt from himself; (2) because an accomplice being a participator in crime, and consequently an immoral person, is likely to disregard the sanction of an oath; (3) because an accomplice gives his evidence under the promise of a pardon, or in the expectation of an implied pardon; if he discloses all he knows against those with whom he acted criminally, and this hope would lead him to favour the prosecution (per Scott J in *R v Maganlal*, 14 B 115; *Md Usaf v R* A 1929 N 215).

These reasons are applicable in the instant case as PW1, PW2, PW3 and Raper took active roles in the commission of the offence. They did not lodge any report relating to the matter and they kept a portion of the money to themselves

[30] For all the above reasons we are of the view that the learned sessions court judge has misdirected herself in calling for the appellant to enter his defence. He should have been acquitted at the end of the case for the prosecution. In view of our finding we do not think that it is necessary for us to consider the other points raised by learned counsel for the appellant relating to the finding made by learned sessions court judge on the

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defence's case. We therefore allow the appeal by the appellant and set aside all the convictions and sentences.

Appeal allowed.

Reported by Brendan Navin Siva